IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SECOND DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION No. 18896 of 2003

Between:

G. Muralidhar S/o Kistaiah
Magdoompur PACS, Siddipet Branch, Medak District

..... PETITIONER

AND

1 The District Cooperative Officer Medak District at Sangareddy
2 The Divisional Cooperative Officer Siddipet, Medak District
3 The Magdoompur PACS, Siddipet Branch Medak District rep. by its

Chairman/PIC.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the impugned action of the respondents particularly the 2nd respondent in issuing impugned proceedings Rc.No. 444/99/B, dated 23-5-2002 for recovery of salaries drawn by the petitioner as per Government memo dated 14-10-91 inspite of judgment of this Court in W.P.No. 3706 of 2002, dated 11-9-2002 as highly illegal, arbitrary and violative of Article 14 of the Constitution of India and consequently set aside the same.

Counsel for the Petitioner : Mr.G.V.SHIVAJI

Counsel for the Respondents: G.P. FOR AGRICULTURE & COOP.

The Court made the following :

ORDER:

The petitioner questions the surcharge order issued by the second respondent dated 23.5.2002 for recovery of the excess allowance drawn by him to a tune of Rs.16,732/- during 1997-98 onwards.

The learned counsel appearing for the petitioner submits that the third respondent society without fixing the staff pattern, pay and other allowances, cannot recover the excess allowance said to have been drawn by the petitioner contrary to Section 116-C of A.P. Cooperative Societies Act, 1964 (for short 'Act'). In support of his contention, the learned counsel for petitioner relied on a Division Bench judgment of this Court made in W.A.Nos. 32 and 413 of 2003 and W.P.No.8522 of 2003, wherein the learned single Judge of this Court held that excess salaries drawn by the employees of the A.P. Cooperative Societies Secretaries and Employees Union pursuant to the memo dated 14.10.1991 cannot be recovered after 16.10.2001. The said judgment of the learned single Judge was set aside in the said writ appeals holding that the said Government Memo dated 14.10.1991 was cancelled as per the orders of the Government in G.O.Ms.No.314, Agriculture and Cooperation Department dated 26.12.2000. It is stated that as per the amended provisions of Section 116-C of Act, the society is bound to fix the staffing pattern, pay and allowances etc., and the expenditure payable to its employees shall not exceed 2% of the working capital or 30% of the gross profit in terms of the actuals in a year, whichever is less, by obtaining prior approval of the Registrar of Cooperative Societies and the requirement is mandatory and unless this exercise is undertaken and complied, the question of recovery does not arise. The Division Bench held that unless the staffing pattern and pay scales are fixed under Section 116-C of the Act, the question of recovery of difference amount does not arise.

Therefore, I am of the view that the said observation has no application to the facts in

the instant case. The surcharge order passed by the second respondent under Section 60(1) of the Act stating that the petitioner has drawn salary contrary to any fixation by the society and the petitioner who is only a Part Time Clerk working in the society is not eligible for promotion to the post of Secretary and as such the pay and allowances drawn by the petitioner are excess and recoverable.

Admittedly, an appeal lies against the surcharge order passed under Section 60 of A.P. Cooperative Societies Act, 1964 to the A.P. Cooperative Tribunal under Section 76 of the Act. Therefore, I am of the view that there is an effective alternative remedy available to the petitioner to file appeal before the A.P. Cooperative Tribunal under Section 76 of the Act. It is stated that as against the amount of Rs.16,732/-, the petitioner has already paid an amount of Rs.8,983/- and therefore the petitioner is liable to pay the balance amount only. It is open for the petitioner to bring all these facts to the notice of the Tribunal and take all appropriate pleas available to him.

Having regard to the facts and circumstances of the case, I am of the view that the writ petition is not maintainable against the said surcharge proceedings and the writ petition is accordingly dismissed, with a liberty to the petitioner to file an appeal before the A.P. Cooperative Tribunal within two weeks from the date of receipt of a copy of this order and on filing such appeal, the Tribunal may entertain and shall pass appropriate orders in accordance with law. No costs.

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V.ESWARAIAH, J

Date: 2.9.2004

DA/KVRK

To

1 The District Cooperative Officer Medak District at Sangareddy
2 The Divisional Cooperative Officer Siddipet, Medak District
3 The Magdoompur PACS, Siddipet Branch Medak District rep. by its

Chairman/PIC.

4 Two CCs to the G.P. for Agriculture & Cooperation, High Court of A.P.,

Hyderabad (OUT).

5 Two CD copies.